

Remarks

The final Office Action mailed August 23, 2005 allowed claims 22, 23 and 31-33, and finally rejected claims 1-10, 11-13, 15-21 and 25-30. The Applicant respectfully requests reconsideration of the final rejection of these claims.

Rejection of Claims Under 35 U.S.C. §102

Claims 18, 19, 21 and 25 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,551,371 to Markey et al. ("Markey '371"). This rejection is respectfully traversed.

Independent claim 18 is written in accordance with 35 U.S.C. §112, sixth paragraph and includes "first means supported by a top surface of the housing for facilitating said flow of atmospheric air through the climate conditioning aperture." This element is accordingly construed as the corresponding structure disclosed in the specification that carries out the recited function, and equivalents thereof. See *In re Donaldson Co. Inc.*, 29 USPQ2d 1845 (Fed. Cir. 1994)(*en banc*); MFEP 2181 et seq. As provided in the previous response, the corresponding structure for the recited first means is set forth in the specification including at page 11, lines 1-10.

In support of the rejection of claim 18, the Examiner identified the first means of claim 18 as corresponding to fan 152 in Markey '371, the recited climate conditioning aperture of claim 18 as "the aperture in the roof element #14 that is covered by the chimney," and identified the fan 152 as being supported by the top surface of the housing 12, 14 by way of base portion 80 of chimney 64.

While creative, this characterization of Markey '371 nevertheless fails to anticipate claim 18. The Applicant points out that the chimney 64 forms a permanently attached portion of the roof (top portion) 14. See Markey '371, col. 3, line 6: ("Chimney 64 is formed *as an integral part of roof 14*"). It is therefore unreasonable to treat the chimney 64 as a separate element from the roof 14.

Nevertheless, the chimney 64 cannot be reasonably viewed as being "supported by the top surface" of the rest of the roof 14, as required by claim 18. The "top surface" of element 14 ends when it meets the vertical sidewalls of the integrally formed rectangular base 80 of the chimney 64. Thus, to treat the chimney 64 as a "spacer" for the first means still fails to meet the requirements of claim 18 whereby the first means is supported by a top surface of the housing.

The Examiner has accordingly failed to account for an explicit element in claim 18, which prevents the establishment of a *prima facie* case of anticipation under §102. See *In re Bond*, 15 USPQ2d 1566 (CAFC 1990)(note that *Bond* dealt with a means-plus-function element as in the present case).

The Applicant therefore requests reconsideration and withdrawal of the rejection of claim 18, as well as for claims 19 and 21 which depend therefrom.

Independent claim 25 similarly recites the above "first means" limitation. Accordingly, reconsideration and withdrawal of the rejection of claim 25 are also respectfully requested on this basis.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-9, 11-13, 15, 16, 26, 27 and 28-30 were finally rejected under 35 U.S.C. §103(a) as being obvious over Markey '371 in view of U.S. Patent No. 2,689,906 to Corbett

("Corbett '906"). Claim 17 was finally rejected as being obvious over Markey '371 and Corbett '906, further in view of U.S. Patent No. 5,868,101 to Marshall ("Marshall '101"). Claim 20 was rejected as being obvious over Markey '371 in view of Marshall '101. These rejections are respectfully traversed.

Independent claim 1 generally features "a climate conditioning unit configured for removeable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by a top surface of the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap therebetween, the climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior." (Claim 1, emphasis added).

The Examiner has posited that if the chimney 64 were merely made removeable from the rest of roof portion 14 and hence, incorporated as a portion of the climate conditioning unit, the above language of claim 1 would be satisfied by Markey '371. See final Office Action, page 4, lines 2-5 and 16-17. This is respectfully traversed.

In forming an obviousness rejection, each of the claim limitations must be accounted for and the respective teachings of the references used to formulate the rejection must be taken as a whole. See e.g., MPEP 2141. In this case, there is nothing to suggest apart from the Applicant's disclosure itself that the climate conditioning unit would be made to be contactingly supported by the top surface of the housing at a position a selected distance away from the climate conditioning aperture, as recited by claim 1.

As discussed previously, one of the advantages of the Applicant's invention as claimed is the ease with which the recited "removeable" climate conditioning unit can be removed and replaced with another unit from above without the need as with prior art units to reach into or

access the interior of the enclosure. Markey '371 has this same deficiency – as discussed previously, the alternative embodiments of FIGS. 6 and 7 of Markey '371 are not readily removable, since the “capture” mechanisms (plates 90, 134) are secured from below via fasteners into bosses 102, 156. (see e.g., Markey '371, col. 3, lines 25-30).

Markey '371 clearly incorporates the chimney 64 as an “integral part” of roof portion 14, and fails to appreciate the advantages of making such removable. The Examiner in turn only considers the chimney 64 as being removeable after engaging in improper hindsight reconstruction in view of the present application.

Moreover, even if the chimney 64 of Markey '371 can properly be viewed as being removeable, this still fails to account for the limitation that the base of the chimney 64 be “contactingly supported” by the top portion of the roof 14 at a selected distance away from the climate conditioning aperture. There is nothing apart from the Examiner's hindsight reconstruction to suggest that the “removable chimney 64” would rest on the roof portion 14 a selected distance away from the aperture as claimed. Rather, it is clear that in accordance with the Examiner's suggestion, the removeable base portion 80 of the chimney 64 would merely align with the climate conditioning aperture in roof portion 14.

These deficiencies of Markey '371 are not met by the addition of Corbett '906 or the other art of record.

In sum, while the Applicant generally agrees that the structure of FIGS. 6 and 7 of Markey '371 may have some similarities to e.g., the embodiment of FIG. 15 of the present application, such similarities are insufficient to establish a *prima facie* case of obviousness.

Accordingly, the Applicant submits that claim 1 sets forth subject matter that is patentably distinct over the art of record, and respectfully requests reconsideration and

withdrawal of the rejection of claim 1. Reconsideration and withdrawal of the rejection of the claims depending from claim 1 are requested on the basis that these claims depend from a patentable base claim.

Markey '371 and the other art of record are similarly deficient with regard to independent claim 29, which expressly claims first and second climate conditioning units generally configured as discussed above. Accordingly, the Applicant further respectfully requests reconsideration and withdrawal of the rejection of independent claim 29, as well as for the claims depending therefrom.

Allowable Subject Matter

The Applicant gratefully acknowledges the allowance of claims 22, 23 and 31-33.

Conclusion

This is intended to be a complete response to the final Office Action mailed August 23, 2005. Reconsideration and allowance of all of the claims in the application are respectfully requested.

Should any questions arise concerning this response, the Examiner is invited to contact the below signed Attorney.

Respectfully Submitted,

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